

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

KMART CORP. d/b/a SUPER KMART

Employer

and

Case 19--RC-14302

UNITED FOOD & COMMERCIAL WORKERS
UNION, LOCAL 1496, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board ("Board").

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds²:

As detailed below, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including leads, employed by the Employer in the meat and seafood department at its Fairbanks, Alaska store; excluding the meat and seafood manager, professional employees, guards, and supervisors as defined in the Act, and all other employees.

SUMMARY

On September 5, 2002, the Petitioner filed the instant petition seeking a unit of all full-time and regular part-time employees in the meat and seafood department of the Employer's Fairbanks store ("Store"), excluding the meat and seafood manager, guards, and supervisors as defined in the Act. The Employer contends the only appropriate unit is a wall-to-wall unit, including all hourly employees employed at its Store and excluding supervisors, professional employees, guards, office clericals, and pharmacy employees. Based on the record as a whole,

¹ Briefs were timely received from the parties and were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization involved claims to represent certain employees of the Employer and; a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I conclude that the Store's meat and seafood department employees have a sufficiently distinct community of interest to warrant a separate, appropriate unit.

STIPULATIONS

The parties stipulated that the following individuals are statutory supervisors as defined in Section 2(11) of the Act: Store director Torry Mayfield, food co-director Jamie Caudy, and department managers Jeff Lisac (Produce/Floral), Mori Achio (Bakery), Lori Meltvedt (Deli), Scottie Myers (Meat and Seafood), Willie Chambers (Dry Grocery), and Ruth Edwards (Famous Eddie's³).⁴ The parties further stipulated that there are 215 hourly employees employed by the Employer at its Store including the following food department employees: 12 meat and seafood employees, 1 dairy employee, 7 bakery employees, 8 deli employees, 7 produce employees, 14 grocery employees, and 6 Famous Eddie's employees.

FACTS

The Store opened in October 2001. The Store occupies approximately 150,000 square feet of selling space and is open 24 hours a day, 7 days a week. It is a full service store consisting of both general merchandise (non-food) departments (garden center, toy, sporting goods, hardware, paint, stationary, camera, image, electronics, hosiery, home, fashion accessories, ladies/men's clothing, children's, and infants) and food departments (dry grocery, floral, produce, bakery, deli, meat and seafood⁵, Famous Eddie's, and freeze and dairy). Approximately 50,000 square feet of selling space is devoted to the food departments.

The Store is headed by the store director who is responsible for overall store management, merchandising, operations, and human resources. The two co-directors, one in charge of the non-food departments and the other for the food departments, report directly to the store director. Each food department is headed by a department manager who reports to the food co-director. The non-food departments do not have department managers, rather, they have lead employees. Most of the food departments also have lead employees who report to their department managers.

Although the store director has the ultimate authority to discipline or terminate employees, the department managers, including the meat and seafood manager, are stipulated supervisors and have, according to the Employer's testimony, the authority to effectively recommend hiring and firing of employees within their respective departments. Further, each department manager is in control of scheduling, ordering, inventory control and levels, sales, presentation, and gross profit for his/her department and participates in the interviewing process.

The petitioned-for unit has 12 employees: 4 meatcutters, 2 meat wrappers, and 6 seafood employees. Of the four meatcutters, one completed an apprenticeship program

³ Famous Eddie's is a fast food restaurant located in the Store.

⁴ The record testimony supports this stipulation.

⁵ The "meat and seafood department" refers to the unit at issue which consists of meatcutters, wrappers, and seafood employees. However, for the purposes of this Decision, I will also make reference to the "meat sub-department" or "meat employees" which refer to the meatcutters and meat wrapper employees in the meat portion of the meat and seafood department, and to the "seafood sub-department" or "seafood employees" which refer to the employees working in the seafood part of the meat and seafood department.

approximately one year ago and has approximately 3 years of experience butchering sides of beef and approximately 2 years of experience cutting smaller pieces of meat for retail sale, one is a journeyman meatcutter with approximately 8 years' experience, and a third meatcutter has approximately 3 to 4 years of experience. The record is not clear as to the experience level of the other meatcutter. The Employer does not have an apprenticeship program or a formal training program for its meatcutters.⁶ However, the record indicates only experienced meatcutters were hired by the Employer and that the Employer looks for at least 6 months' experience. An Employer witness testified that it would take anywhere from 2 to 5 months to train meatcutters to work in the Store. Two meatcutters testified that it would take from 6 months to 2 years to learn how to cut meat in the store. In contrast to the level of experience sought in the meat sub-department, the deli manager testified she would accept any level of experience in the deli department. The record does not indicate how much experience is required to work in the other departments.

The Store contracts with Associated Grocers to provide meat to its store. All the meat supplied to the Store is either boxed or prepackaged/case-ready. The boxed meat, which needs to be processed, consists of large pieces of meat ("primals") that need to be cut into retail cuts ("subprimals"). The prepackaged/case-ready meat is ready to go straight into the Store's retail cases with no additional processing. Some type of processing by the meatcutters (either cutting or grinding) is required on 39.05 percent of the boxed meat sold. Of the 39.05 percent of boxed meat, approximately 21 percent of the Store's meat and seafood department sales are beef; 10.5 percent are ground beef; 7.1 percent are pork, and .45 percent are lamb/veal. The rest of the meat and seafood items, 64.1 percent, do not require processing and consist of: 8.3 percent seafood⁷; 11.5 percent lunchmeat/sausage/hot dogs; 8.5 percent smoked/processed meat; 10.2 percent frozen meat, and 15 percent of other meat products including offal and fresh poultry⁸. The fresh meat items are presented to customers via a 48-foot fresh meat refrigerated case. Twenty-six feet of the fresh meat case contains items processed by the meatcutters, the remaining 22 feet of the case is filled with prepackaged fresh items. Frozen meat, poultry and other items not requiring any processing take up approximately 152 feet of a refrigerated case.

The fresh meat arrives in the Store in boxes containing Kryovac packages of primal cuts of meat. The meatcutters process the meat in the meat prep area, which is an enclosed area located behind the fresh meat retail cases. The meatcutters cut open the packages and drain out any blood contained in the packages prior to processing the meat. Generally, the meatcutters determine what types of cuts need to be made according to a cut list. The cut list is compiled by one of the meatcutters each morning. The meatcutter walks the length of the fresh meat case and determines which items have been sold and need to be replenished, and the meatcutter determines if additional cuts of advertised items need to be processed. These items are listed on the cut list. The meatcutters then get the appropriate boxes of meats out of the cooler or freezer, and cut and process the primals into retail cuts using up to six types of knives, bone in saws (for primals with bones), non-bone saws, a grinder, and a cuber. Although the Employer supplies the meat sub-department with knives, at least two of the meatcutters use their own knives. Each primal can be cut into various types of cuts. For example, a primal beef

⁶ The Employer has a computer based training program; however, the program does not include meatcutter training.

⁷ Although Employer's Exhibit 80 indicates that seafood does not require cutting, an Employer witness testified that the meat and seafood employees do in fact cut fish fillets for customers on a seemingly regular basis, particularly halibut and salmon fillets. The testimony did not indicate what percentage of sales this amounted to.

⁸ All poultry in this store is prepackaged.

knuckle can be cut into bottom rounds, sirloin tip steaks, cube steak, roasts, stir fry pieces, stew meat, and the trim can be used for hamburger meat. The meatcutter decides which types of cuts he needs from a primal.

In determining which cuts of meat are necessary, the meatcutters also decide how to make the cuts. The Employer witnesses testified that only minimal “seaming” is necessary in cutting the primals as this is done by the supplier. Seaming is the process of cutting the membranes between the muscles in order to separate pieces of meat. The food director testified that the only seaming that is now done is on full cut rounds in order to cut it into top round, bottom round and eyes. A meatcutter also testified that although some seaming is still necessary, particularly in cutting a boneless chuck into a chuck eye, it is not done on a regular basis. Another meatcutter testified that he often seams knuckles and boneless chucks. The Employer witnesses further testified that minimal, if any, “trimming” is needed on the primals, as the meat is now “user friendly.” User friendly refers to the supplier’s practice of cutting the amount of fat on the primals down to a quarter inch. However, the meatcutters testified that many of the primals contain anywhere from a quarter inch to three-quarters of an inch of fat. Therefore, on most of the primals, trimming of fat down to one-eighth of an inch is necessary to make the meat presentable. In addition to trimming fat, the meatcutters must trim meat on the outside portion of the piece if it has become discolored. Primals with bones may also need to be “chimed.” Chiming entails trimming part of the bone of a piece of meat with a band saw and removing the vein within the bone. Chiming the bone prevents the bone from puncturing the plastic once it is wrapped. Improperly chimed meat is visually unappealing to the customer. The meatcutters also “angle” the meat by squaring off the first cut of meat to minimize loss of meat and to ensure that the rest of the cuts are even. Properly angling the meat is also an important aspect of merchandising, as it makes the meat presentable to the customer. Further, an improperly cut steak can reduce the price of that cut, thus affecting store profits.

In addition to cutting meat with saws and knives, the meatcutters also grind meat twice a day – once in the morning and once in the afternoon.⁹ The meatcutters use both trim from meat as well as cut up chuck. The meat is put in the grinder, then the ground meat is put back into the grinder on the mixer setting to mix the meat. The meatcutters make ground meat with three levels of leanness. Once the proper amount of mixing is done, the meat is put on trays, weighed at the weight station, wrapped, put on a conveyor belt and labeled by the wrappers. The meatcutters also use a cuber (to make cube steaks or tenderize pieces of meat) and slicers; however, the record does not reflect how often this occurs.

On occasion, the meatcutters also cut meat to customer specifications. The testimony is unclear as to how often this happens. One meatcutter testified he custom cuts meat perhaps once per week. The food director testified that the seafood employees make custom cuts on a regular basis.

In addition to cutting and processing meat, the meatcutters at times may help break down freight in the receiving area, stock the meat and seafood products, wrap meat (by putting it on a tray, weighing it, wrapping it in plastic, sealing it and labeling it), pull out-of-date and leaking products off the shelves and out of the cases, and rotate product in the coolers. One meatcutter testified that he spends the majority of his day “on the block” cutting meat, with approximately half an hour in the morning spent walking the cases and compiling a cut list, 60 to 80 minutes grinding beef, and occasionally helping when shorthanded with stocking, customer

⁹ A meatcutter testified this takes approximately 30 to 40 minutes in the morning and at the end of the day.

service, and wrapping. The other meatcutter who testified stated he spends anywhere from 80 to 90 percent of his time cutting, sawing, grinding and cubing meat. The rest of the time he spends outside the cutting room stocking, assisting customers, and when needed, unloading freight. He also testified he has not worked outside the meat sub-department. This particular meatcutter testified that on the day he appeared for this hearing, he had cut 72 primal knuckles into steaks, roasts, and stew meat and spent 1 hour helping to unload freight. He testified, however, that he normally does not help unload freight as there are designated people who do this.

An Employer witness testified that, although meatcutters and wrappers do not work outside of the meat and seafood department, meatcutters do work in the seafood sub-department to cover breaks for seafood employees, assist with filleting fish and stocking the fish case.¹⁰ Further, seafood employees are responsible for stocking the meat sub-department after the meat sub-department employees have left for the day.

No one other than the meatcutters engage in any cutting or grinding of meat. Further, no employees from other departments have worked in the meat sub-department for any purpose including cutting, grinding, cubing or wrapping meat.

On certain occasions, employees from other food departments have worked in the seafood sub-department. Since the grand opening of the store in October 2001, most departments have been short staffed, including the seafood sub-department, and have needed help from other departments. As such, deli employees, on an infrequent basis, cover breaks for seafood employees. A receiving clerk worked two shifts in the seafood sub-department within the last four weeks to cover for a sick seafood employee. A women's clothing employee has worked on and off in the seafood sub-department since at least May of 2002.¹¹ A produce employee worked in both produce and the seafood sub-department for several weeks this summer prior to quitting. Another produce employee also worked in both produce and the seafood sub-department for the summer prior to quitting. The week prior to this hearing, a deli employee began working in both the seafood sub-department and deli departments. Only one employee has transferred from the seafood sub-department to another location in the store. One seafood employee had worked as needed in the deli but has not done so in one or 2 months. At least one seafood employee is cross-trained to work as a cashier at the main registers, although it is unclear how often she has performed this duty.

In the back of the grocery store, there is a row of freezers for the food department, including a general freezer and ones for the bakery, deli, and ice cream departments, and for the meat sub-department. The general freezer has room for grocery department products and Famous Eddie's products as well as overflow from the other food departments. Each department freezer at times also holds product from other departments if there is no room elsewhere or if there is a mixed pallet (a pallet with product from more than one food department) that was not broken down. Twice a week, major food shipments arrive and are generally unloaded by the food co-director, his assistant, the dairy manager, the grocery manager, and a receiving clerk, and are taken to the designated area for each department. There is also a receiving crew that unloads the general merchandise from the trucks. Once unloaded from the trucks and received in their areas, the department manager and at times, the department associates, break down the pallets. In breaking down mixed pallets, there is some

¹⁰ One meatcutter testified he has not worked in the seafood department.

¹¹ This employee was interested in transferring to the seafood department but due to scheduling conflicts was not able to transfer. However, she continues to alternate working shifts in both departments.

contact between department employees when product from one department is dropped off in another department. Employees from all departments are familiar with and use hand machines to maneuver the pallets. The product is taken from the pallets and stored or put on the retail floor. In instances where two departments are close to each other, employees from different departments may have incidental contact when stocking products in the cases. Cross merchandising, putting product from one department in another department, also results in some contact between employees in different departments. For example, bread from the bakery may be displayed in the meat sub-department area or a deli salad may be displayed in the seafood case.

Common lockers, a break room, bathrooms, a parking area, a time clock, and a smoking area are available for all employees. All employees receive the same orientation booklet and go through the same orientation process with the human resources manager. All employees are instructed to use the front entrance of the store to enter or exit the Store. All employees receive the same benefits and employee discount card. Employee and management meetings are held most days for all employees on shift in order to talk about sales, inventory, promotions, displays and other store issues. Such meetings tend to last approximately 15 to 30 minutes. Employees from all departments are welcome to attend the meetings, although not required to do so. One meatcutter testified that he has attended such meetings. It is unclear if other meat and seafood employees have attended the meetings on a regular basis. Employees from all departments use the same garbage compactor and cardboard baler in the Store's back room. All employees are invited to on-site company lunches once a month and to holiday parties and company events.

The shifts in each department vary. For example, the first shift in the meat sub-department begins at 5:30 or 6:30 a.m. and ends at approximately 7:00 p.m.; the deli shifts are from about 5:30 a.m. until about 10:00 p.m.; the floral department is open from 9:00 a.m. to 5:00 p.m., and the bakery shifts begin at midnight and last until about 9:00 p.m.

The meatcutters' salaries range from \$16.25 per hour to \$19.25 per hour. An Employer witness testified that these were also the approximate wages the meatcutters earned upon being hired. The store director testified that the starting wage for all employees is \$8.50 per hour but that the meatcutters, as well as others, started at a higher wage due to experience. Other than one stocker who earns \$21.00 per hour, the meatcutters' salaries are higher than any other standard employees' salaries. Three food leads earn hourly wages within or above the meatcutters range: dairy lead - \$19.72 per hour; produce lead - \$18.00 per hour, and the bakery lead - \$16.85 per hour. The deli lead makes less than the meatcutters at \$14.00 per hour. The two meat wrappers salaries are \$15.25 and \$13.00 per hour. The seafood employee's wages run from \$8.50 to \$11.25 per hour. Aside from leads, the produce employees earn \$12.00 and below; Famous Eddie's employees earn \$10.00 and below; dry grocery employees earn \$16.00 and below; bakery employees earn \$14.25 and below; deli employees earn \$10.80 and below, and the floral employee earns \$13.25 per hour.

ANALYSIS

Historically, the Board has found that meat department units were presumptively appropriate because the employees utilized a broad range of traditional meatcutting skills such as cutting whole carcasses and boning, seaming, and trimming meat. *Wal-Mart Stores, Inc.*, 328 NLRB 904 (1999). However, as the meat industry evolved, meat departments increasingly handled boxed meat instead of whole carcasses, thus minimizing the full use of traditional meatcutting skills. As a result, the Board determined that "meatcutters who worked primarily

with boxed primal and subprimal meat did not warrant the presumption of appropriateness historically afforded to craftsperson meatcutters.” *Id.* Rather, the Board in *Scolari’s Warehouse Markets*, 319 NLRB 153 (1995), balanced the distinctive functions and skills of the meat department employees¹² with traditional community of interest factors to determine if a meat department unit constituted a separate appropriate unit. *K Mart Corp.*, 323 NLRB 582 (1997). Thus, “although meat department employees need not exercise a full range of traditional meat cutting craft skills to constitute an appropriate separate unit, they must perform separate and distinct skills and functions from other employees in preparing meat for final retail sale.” *Kmart Corp.*, 174 F.3d 834 (7th Cir. 1999). In making a determination that the meat department constituted an appropriate unit, the Board in *Scolari’s* relied on the following seven factors:

- (a) the substantial portion of the Employer’s meat department business involved boxed meat;
- (b) the continued application of specialized meatcutting skills was necessary for the processing of boxed meat;
- (c) the meatcutters had a higher level of training;
- (d) a substantial percentage of the unit was engaged in skilled meatcutting work;
- (e) the unit had separate supervision;
- (f) there was limited interchange and transfers between the meat department and other departments; and
- (g) meat department employees earned higher wages than other store employees.

Based on the above-listed factors, and having considered the entire record, including the testimony and numerous exhibits, I reach the conclusion that the appropriate unit includes all full-time and regular part-time employees, including leads¹³, employed by the Employer in the meat and seafood department at its Fairbanks, Alaska store; excluding the meat and seafood manager, professional employees, guards, and supervisors as defined in the Act, and all other employees.

In applying the first *Scolari* factor, the record reveals that a substantial portion of the Employer’s meat sub-department’s business involves boxed meat rather than prepackaged meat. In particular, 39.05 percent of the Employer’s sales comes from boxed meat, which requires some type of processing. In *Scolari’s*, 50 to 55 percent of the Employer’s meat sales consisted of boxed meat, in *Kmart*, 40 percent of the meat sales were from boxed meat, and in *Wal-Mart*, 57.4 percent were from boxed meat. In all three cases, the percentages included ground beef.¹⁴

Second, the meatcutters continue to exercise a significant amount of traditional meatcutting skills, which are distinct from other Store employees. The Employer argues that other departments contain skilled employees. For example, the bakery employees are skilled in decorating cakes; the produce employees must learn how to trim fruits and vegetables and how to keep them in prime condition; the deli employees know how to slice and dice deli meats and cheese for sandwiches and party trays; and the photo imaging employees run a one-hour photo processing machine. However, the record does not show that the other employees are required, or possess, the same level of experience and skill that the meatcutters possess. The meatcutters determine how to effectively and efficiently cut the primals into salable parts and

¹² The references to a meat department in *Scolari’s* encompasses a seafood department.

¹³ The parties also stipulated that leads in the food department are to be included in any unit found appropriate by the Board. As such, the meat and seafood department leads are included in the unit.

¹⁴ Specifically, in *Wal-Mart*, 30 percent of the 57.4 percent of meat sales consisted of ground beef.

use specialized equipment including knives, saws, a grinder and a cuber. Further, the meatcutters continue to use the traditional skills of seaming, chiming, trimming and angling meat. They also custom cut meat if requested by customers. All these discretionary skills are necessary in order to optimize the profitability of each cut of meat. Further, the Employer pays the meatcutters more than nearly every other employee. These wages are clearly reflective of the employees' experience and skill level. In fact, the Employer testified that the meatcutters were paid the premium wages because they had to "steal" them away from the Store's competitors and the only way to steal them was to match or beat their wages. Thus, based on the evidence provided, the meatcutters exercise distinct, specialized skills, traditionally used in the meatcutter profession.

Third, the meatcutters are highly trained employees, each with a number of years of relevant experience. The Employer argues that the meatcutters need minimum training in order to do the job correctly. Again, however, the Employer pays these employees premium wages to work in the Store due to their experience. The fact that the Employer does not have an in-house apprenticeship program is outweighed by the fact that the meatcutters were already experienced when hired.

Next, one-third of the unit is engaged in skilled, traditional meatcutting work, which is a substantial portion of the unit. In *Kmart*, the Board found that this factor was met when only 25 percent of the unit consisted of meatcutters. *Kmart Corp.*, 323 NLRB at 588. Further, the two wrappers and six seafood employees in the unit are integral to the operation of the meat and seafood department. The meat wrappers assist the meatcutters by weighing, wrapping, and labeling the majority of the meat. Further, they also stock the meat in the cases. The meatcutters assist the seafood employees in filleting fish, covering breaks, and stocking. The seafood employees are also partially responsible for stocking the meat cases. A meat and seafood department is appropriate even if it includes unskilled employees.¹⁵ *Id.* at 588.

Fifth, the meat and seafood department employees have direct supervision separate from other employees in the store. The meat and seafood manager is a stipulated supervisor with the authority to hire and fire employees, and with substantial authority over the department employees and over the daily workings of the department, including its profit margin. The store director's overall responsibility of the Store does not undercut the direct supervision by the department manager over his employees.

Sixth, the minimal amount of interchange and interaction between unit employees and the rest of the store does not undermine the community of interest shared by the unit employees. Most importantly, there is no evidence that any of the meatcutters ever work outside of the meat and seafood department or that anyone other than the meatcutters process meat in the department. In the last year, approximately five employees have substituted for employees in the seafood sub-department, mainly due to staffing difficulties; however, it appears that only one seafood employee has transferred out of the department and only one employee has worked in other departments. Further, a certain amount of interaction in a store of this size is predictable. However, the interaction of meat and seafood department employees with employees outside their department is negligible. I do not regard incidental contact while in the freezers, receiving area or in the retail area to be substantial, particularly where, as here, it does not appear that any other employee has ever exercised the skills of a meatcutter. Such

¹⁵ The testimony indicates the seafood employees fillet fish, stock product, and provide customer service, among other routine activities.

infrequent interchange and interaction between department employees does not require a different unit finding.

Finally, as discussed, the meatcutters' wages are higher than most of the employees in the Store. Excluding leads, there is only evidence of one employee earning more than the meatcutters. Such differentials in wages indicates the value placed on the meatcutters' skill levels.

In reviewing the type of meat to be cut; the skills necessary to do the work; the levels of experience; the integration within the unit; the supervision of the employees; the limited amount interchange and interaction with other employees; and the meatcutters wage rates, I find the meat and seafood employees share a distinct and separate community of interest. Based on the above, and the record as a whole, I conclude that a unit consisting of the meat and seafood employees, including the meat and seafood leads, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

There are approximately 12 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 1496, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before November 8, 2002. No extension

of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 15, 2002.

DATED at Seattle, Washington, this 1st day of November 2002.

Catherine Roth, Acting Regional Director
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